

# **Vale**

## **Clive Andreas Evatt**

**\*1931 – + 3 August 2018**

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### **Clive Evatt: King of the Plaintiffs' Defamation Bar**

**Michael McHugh AC QC, 9 August 2018, 4:14pm**



**Defamation barrister Clive Evatt in his Sydney chambers.**

**Photo: John Feder, News Corp**

Clive Andreas Evatt, barrister and Renaissance man, died on Friday, August 3. Born in 1931, he was the only son of Clive Raleigh Evatt, QC, a famous barrister and a minister in a number of state governments, and Marjorie Hannah Andreas, the daughter of a prominent businessman. Evatt jnr's uncle was Dr H.V. Evatt, a former High Court Justice. His sister Elizabeth won the university medal for law and became the first chief judge of the Family Court of Australia. His sister Penelope took a different course, marrying the famous architect Harry Seidler and later becoming an architect herself.

Given the family background in the law, it was almost inevitable that Evatt jnr would become a barrister. But law was never his only interest. During his university days, he developed a passionate interest in opera and ballet, literature and classical music and paintings. After leaving university, he also began betting on horses and was extraordinarily successful, winning a seven-figure sum in the period 1960-1976, equivalent to many millions of dollars today. In 1972, he

opened the *avant garde* Hogarth Gallery, which largely pioneered the sale of Aboriginal paintings in Sydney.

Evatt was admitted to the bar in 1956. "Young Clive" (as he was known in recognition of his father) remained an institution at the Sydney defamation bar until his death. Experienced practitioners knew that beneath his disarming exterior, behind the injured wildebeest appearance of the shuffling old man with a cane, lay a uniquely dangerous opponent.

More than any counsel of his era, Evatt knew how to strip his case back to the barest essentials, paring away everything unnecessary to his client's success before the jury. With unsettling frankness and a mischievous glint in his eye, he was unembarrassed about abandoning any part of his case on which the witnesses were not "coming up to proof".

Evatt's preferred approach to the notorious technical complexity of the law of defamation was not to engage with it. In pre-trial applications in the Defamation List, his favourite response to

thorny arguments raised for the defendant was, "Well, there's a lot for your honour to think about there" — effectively shifting to the court the obligation to answer the point.

Where Evatt excelled was in a jury trial. He had an uncanny ability to connect with, and charm, jurors 40, 50, even 60 years his junior. Unlike his opponents, he would lead all the evidence he needed from a witness in five or 10 minutes. He was also savvy enough to decline to call a plaintiff to give evidence in his own case in chief whenever he thought cross-examination might damage the plaintiff, something most practitioners would lack the tactical daring to do.

Many lawyers believe it is unwise to sue for defamation if the would-be plaintiff has done anything else discreditable. Such baggage will usually emerge at the trial, and trial publicity can do more damage to a reputation than the original publication. But Evatt was undeterred that, in the argot of the trade, a plaintiff might not be a "cleanskin". He seemed to be a magnet for such clients, who would sue — and win. By any reckoning, he was the King of the Plaintiffs' Defamation Bar.

Evatt was educated at primary schools on the North Shore including Artarmon Opportunity School before going to North Sydney Boys High School where he finished first in the state in geography in the leaving certificate. Although he graduated in arts (majoring in economics) and law from Sydney University, he did not do as well at university as he could have done. This was largely because he seemed more interested in attending race meetings, as well as playing cards with friends, than studying legal texts. He also led a very active social life.

During winter months in particular, he would host friends to weekends of fun, good food and games to test the mind at the magnificent mansion built by his maternal grandfather at Leuralla in the Blue Mountains. Up to 12 people might be staying in the house, around a roaring fire, discussing law, politics, art and racing.

Until 1967, Evatt's practice at the bar was dominated by personal injury cases in which he had an enormous practice. He also did the occasional defamation case with his father for politicians such as Tom Uren, Les Haylen, Bill Rigby and Clarrie Earl and celebrities such as the singer, Shirley Bassey.

In 1967, Evatt became a casualty in the move by the Law Society to end the practices of five solicitors who were charging very high fees for conducting cases for impecunious plaintiffs. Evatt had been briefed by two of these solicitors and, as counsel, had gotten 18 plaintiffs to sign authorities deducting the solicitors' fees from the verdicts they obtained.

The Court of Appeal held that Evatt was guilty of professional misconduct in that he knowingly

facilitated a course of conduct whereby the two solicitors charged extortionate fees and himself charged fees "which were excessive" and which "he knew would be paid in part from the amounts so charged". The Court of Appeal suspended him from practice for two years. The Bar Association appealed to the High Court, which held that the Court of Appeal was "in error to suspend [Evatt] from practice rather than to disbar him".

Thirteen years elapsed before a unanimous Court of Appeal held that he was a fit and proper person to resume practice as a barrister after hearing evidence of his probity and honesty from 21 artists, eight art dealers, two art critics, two art curators and two publishers who had commercial dealings with him over the intervening years.

During this period away from the law, Evatt's principal source of income was betting on horses. In 1961, Don Scott, a high school friend, and Evatt, using a sophisticated method of assessing the ability of racehorses, won a large amount of money by backing the Doncaster Handicap winner, Fine and Dandy, at 66-1 and 50-1. This win and similar large wins attracted the attention of the journalist, Frank Browne, who subsequently christened them "The Legal Eagles". They continued to bet successfully until November 1974 when Scott gave up betting to become a playwright. Evatt continued betting for another two years but in 1977 he mysteriously stopped betting and never again set foot on a racecourse. No one has ever discovered why he gave up betting — perhaps it was because he did not need the money and was more interested in running the Hogarth Gallery, which he had founded.

Much of Evatt's betting winnings were used to acquire valuable paintings including those by Brett Whitely, Arthur Boyd and Roy Lichenstein and later those by Tim Storrier and Jeffrey Smart. Insuring these paintings attracted the interest of the Commissioner of Taxation who issued amended tax assessments based on the significant increase in Evatt's wealth over the preceding years. Fortunately for Evatt, his betting was on credit and recorded in his name in bookmakers betting sheets. In a lengthy case before a Taxation Board of Review, Evatt established that the increase in his wealth was the result of betting winnings by tendering the betting sheets, which had been subpoenaed from the State Treasury. The board held that the winnings were not taxable and set aside the amended assessments.

After the High Court decision, Evatt did a fine arts course at Sydney University and topped the course. Subsequently, he lectured in fine arts at the University. His expertise led him to found the Hogarth Galleries in 1972.

Irreverent and irrepressible, Evatt was a larger than life and formative figure in the Australian art world. He loved publicity and revelled in shaking up staid 1970s Sydney with some of his early

exhibitions. Ivan Durrant's *Severed Hand Happening*, which was alleged to be a human hand displayed in a box made headlines in local newspapers, and the erotic paintings, drawings and sculpture of *The Playboy* exhibitions turned the Hogarth Galleries into a lively venue. And nowhere else in Sydney could one buy posters by Jackson Pollock for \$35 or Salvador Dali for \$30.

Evatt became a pioneer of the Australian art market introducing artists such as Garry Shead, Brett Whiteley, Martin Sharp, Cressida Campbell and Peter Kingston. He was an early champion of feminist and women's art and supported Miriam Stannage, Kerrie Lester and Mandy Martin early in their careers. He was also a generous supporter of other early-career artists, a fact he would have quickly dismissed.

Evatt's ability to foresee trends in the art market resulted in early investments in Aboriginal art, Hornby trains and toys. In 1976, he purchased a collection of Aboriginal art and displayed it in the gallery. It became a drawcard for international visitors. The Hogarth Galleries subsequently became Australia's foremost Aboriginal art gallery credited with exhibiting Aboriginal art in the fine art tradition.

A discerning buyer, he amassed an extensive and eclectic personal collection. Some of the more valuable works were on permanent loan and exhibited in local and overseas institutions. Many of his art works were displayed in the Supreme Court of New South Wales.

In 1983, Evatt decided that the magnificent former home of his maternal grandfather in the Blue Mountains should be preserved and made open to the public, a course which required planning approval. In considering the application for approval, the local council gave Evatt three options: the house could be opened to the public as a garden, a house or a museum. Evatt chose "museum" and, because the antique toy market

had begun to grow in popularity, he decided that it would be appropriate to make it a toy museum.

So in 1983, Evatt and his wife Elizabeth opened the Leuralla Toy and Railway Museum. With his customary energy and vision, Evatt set about assembling what has become one of the most significant collections of 20th century toys in the world. The museum also contains a collection of photographs, published works and other objects in memory of his uncle, Dr Herbert Vere Evatt, and his father, Clive Raleigh Evatt, QC, both lawyers and politicians of renown.

Evatt loved the arts in all its forms. He had an unparalleled knowledge of art history. He also had an extensive knowledge of music and opera, loved Wagner and was a frequent visitor to the Bayreuth Festival. He had a particular interest in pop art and introduced Andy Warhol, Jasper Johns, and Allen Jones to the Australian market. Johns' *Girl Table* of 1969 was displayed at the gallery and caused a riotous reaction. A newspaper reported that there was now a "Women's Lib blitzkrieg", which exhorted women to "smash sexist art oppressors!"

Characteristically, Evatt said he was pleased that "these people were angry". He said that the last person who got angry about art was Dr Goebbels, "and we've had to wait for 30 years for someone else to get angry".

Evatt is survived by his sisters, Elizabeth and Penelope, his first wife, Dr Susan Hepburn and the five children from that marriage - Elizabeth, Mary, George, Ruth and Victor, his second wife, Elizabeth and their two children, William, Alice and stepson Jonathon.

"Remembering Clive", 5.30pm Thursday, August 16, Sir Anthony Mason Chambers, level 14, 179 Elizabeth Street, Sydney. If you wish to attend, please contact the clerk, John McNamara at [john.mcnamara@siranthonymason.com.au](mailto:john.mcnamara@siranthonymason.com.au) or 9373 7447"

<https://www.smh.com.au/national/clive-evatt-king-of-the-plaintiffs-defamation-bar-20180808-p4zw61.html>

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## Fredrick Töben - A Moment With Clive Evatt

1. Fearless Clive Evatt even acted on my behalf when *The Australian* newspaper and Senator Christine Milne defamed me as a "Holocaust denier", "Antisemite" and "fabricator of History".

2. The matter reached the High Court of Australia where it was dismissed on grounds that my action in the lower courts was an abuse of process, i.e. the primary judge had ruled that all I wished to do was use the court case as a platform for spreading my views.

3. The underlying reason why this defamation action was unsuccessful was because no legal jurisdiction anywhere in the world would dare, legally, to define these three concepts.

4. These concepts are "moving targets" used to stifle debate on matters Holocaust by using legislation that has been adapted from proper defamation principles where truth is a defence.

5. However, once these terms are legally defined, then they cease to be moving targets - and can be investigated for truth content, which is the last thing anyone, such as Professor Deborah Lipstadt wishes to happen.



6. By employing legislation where "hurt feelings" prove the alleged offence, sophistry stifles any kind of meaningful defence, and so legal corruption-power politics rules the day.
7. During an interval at the appeal stage Counsel for the defence loudly claimed I was an "antisemite" and a "Holocaust denier", to which Clive Evatt responded: "He's a fighter! What's wrong with that?"
8. Clive Evatt, who has Jewish relatives, knows the honest Holocaust story, and he also knows how quickly some so-called Jewish refugees-Holocaust survivors entered Australia after the war with just a suitcase, but then a year later had acquired multiple apartments and houses, etc.



During my defamation action barrister, Clive Evatt, had to endure direct media attacks of the ritual defamation kind - more later. At one time he deflected one such attack by conceding I was not quite the "full quid". My response was to prove that this factual statement was not true - and I handed him a one pound note, which proved to him I was indeed the full quid.

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## Barrister Clive Evatt dead at 87

[Emily Ritchie](#), Reporter, 8:05PM August 3, 2018

[\\*7 Comments](#)



**Barrister Clive Evatt pictured in 2016.**

**Picture: Adam Taylor**

Eccentric defamation lawyer Clive Evatt has passed away, aged 87, a death which his legal colleagues say signals the "end of an era".

Throughout his 60-year career, the Sydney barrister represented many notable clients including Abe Saffron, his brother-in-law architect Harry Seidler, bookmaker Rob Waterhouse and Gypsy Fire, the actor and dancer Emilia Caruana wrongly portrayed by the newspaper *Truth* as Bob Dylan's sex slave.

In 2012, Evatt secured a \$176,296 damages payout for former Guantánamo Bay detainee Mamdouh Habib over defamatory comments made by broadcasters John Laws, Steve Price and Ray Hadley on radio stations 2UE and 2GB.

Most recently, Evatt represented 49-year-old Moutiaa El-Zahed, the wife of a convicted Islamic State recruiter, who in 2016 failed to stand on nine occasions for a district court judge.

The son of the late barrister and NSW Labor minister Clive Raleigh Evatt, QC — who also acted for a range of famous plaintiffs in defamation proceedings, including Tom Uren, Shirley Bassey and Dawn Fraser — and nephew of High Court judge and federal Labor Attorney-General Herbert Vere "Doc" Evatt, Clive jnr was born in 1931 and was called to the bar in 1956.



**Evatt in his Sydney chambers. Picture: John Feder**

Alongside his career as a lawyer, Evatt was also an avid art collector and dealer, having opened the Hogarth Galleries in Paddington in 1972 and with a number of Brett Whiteley's hanging in his Turramurra home on Sydney's upper north-shore.

One of his legal colleagues, fellow Sydney lawyer Mark O'Brien, said Evatt's passing meant defamation law "won't be fun anymore".

"It is a shock," Mr O'Brien, who had known Evatt for over 30 years, said.

"He was cunning but always courteous. He was the champion of impetuous litigants who didn't have the means to sue the big end of town. His wins were many, his defeats were more than occasional but he always took it in the same gracious spirit. He was a gracious loser, which doesn't apply to many lawyers. To use the old hackneyed phrase, it's certainly the end of an era."

Leading media lawyer Justin Quill echoed the sentiment. "Clive's death is the end of an era," Quill said. "His courtroom style was certainly different to the usual — especially in recent years."

Rob Waterhouse said on social media today it was "a very sad day indeed: we lost my loyal friend Clive Evatt".

"Without doubt the greatest 'outside the box' lawyer ever, who simply solved difficult issues for his clients and won their cases," Waterhouse said.

[\\*https://www.theaustralian.com.au/news/nation/barristercliveevattdeadat87/newsstory/cb1250323082b7fc91c17ee3f5adf0bf](https://www.theaustralian.com.au/news/nation/barristercliveevattdeadat87/newsstory/cb1250323082b7fc91c17ee3f5adf0bf)

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[National](#), [NSW](#), [Legal industry](#)

## High-profile defamation barrister Clive Evatt dies



**By Michaela Whitbourn, 3 August 2018 — 6:01pm**

Clive Evatt, one of the best-known defamation barristers in Sydney, has died aged 87.

Over a career spanning more than 60 years — interrupted by a 13-year period of exile — Evatt acted for a host of famous plaintiffs against media outlets, including underworld figure Abe Saffron, architect Harry

Seidler and dancer Gypsy Fire, wrongly portrayed by newspaper *Truth* as Bob Dylan's sex slave.





**Clive Evatt at his Turramurra home in 2012.**

**Photo: James Alcock**

In 2012, Evatt secured a \$176,296 damages payout for former Guantanamo Bay detainee Mamdouh Habib over defamatory comments made by broadcasters John Laws, Steve Price and Ray Hadley on radio stations 2UE and 2GB.

He also acted for Rachelle Louise, the former girlfriend of convicted murderer Simon Gittany, in her District Court defamation case against [The Daily Telegraph](#). The parties reached a settlement in 2015 when the newspaper admitted it was wrong to refer to her as a stripper. In his opening address, Evatt had referred to Louise as a modern-day Joan of Arc.

Evatt told the Herald in 2012 that Saffron's pursuit of the Gold Coast Bulletin over a crossword clue referring to a "Sydney underworld figure, nicknamed Mr Sin" was the first case of defamation by crossword.

"I never saw any evidence that he is a criminal," Evatt told journalist Michael Duffy. "Mind you, I think he is on the fringe."

The son of the late barrister and NSW Labor minister Clive Raleigh Evatt, QC – who also acted for a range of famous plaintiffs in defamation proceedings, including Tom Uren, Shirley Bassey and Dawn Fraser – and nephew of High Court judge and federal Labor Attorney-General Herbert Vere "Doc" Evatt, Clive jnr was born in 1931 and was called to the bar in 1956.

Evatt's sisters are equally famous: Elizabeth Evatt is a trailblazing lawyer and was the first chief judge of the Family Court of Australia, while Penelope Seidler (nee

Evatt) is a distinguished architect and the wife of Harry Seidler.

Evatt, who was also a well-known art dealer and opened the Hogarth Galleries in Paddington, was struck off by the High Court in 1968 after he was found to have engaged in professional misconduct by participating in a scheme in which two solicitors, H. A. P. Veron and B. R. Miles, charged "extortionate and grossly excessive sums" to clients.

The NSW Supreme Court found Evatt "charged fees as counsel which were excessive and which he knew would be paid in part from the amounts so charged by the solicitors". The court ordered he be suspended as a barrister for two years but the Bar Association appealed to the High Court and asked that he be disbarred.

Evatt returned to the bar in 1981, when his defamation practice took off. Bookmaker Rob Waterhouse said on social media on Friday it was "a very sad day indeed: we lost my loyal friend Clive Evatt".

"Without doubt the greatest 'outside the box' lawyer ever, who simply solved difficult issues for his clients and won their cases," Waterhouse said.

NSW Bar Association president Arthur Moses, SC, said Evatt was a "renowned member of the NSW Bar, art collector [and] gallery owner" who became "the foremost defamation barrister" after being admitted to the profession in March 1965. He appeared "invariably for the plaintiff", Moses said.

"During his forced break from practising at the Bar, Clive directed his efforts to acquiring a fine arts degree, amassing a valuable art collection and to setting up the pioneering Hogarth Galleries," Moses said.

"Clive Evatt was one of the more fascinating characters to have practised at the NSW Bar. He was a formidable, punctilious opponent at the Bar Table in defamation cases and defended the reputations of people from all walks of life. We are unlikely to see anyone quite like him again. Vale Clive."

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**Michaela Whitbourn, [Facebook](#), [Twitter](#)**

**Michaela Whitbourn is *The Sydney Morning Herald's* Legal Affairs and Investigations reporter.**

**\*<https://www.smh.com.au/national/nsw/high-profile-defamation-barrister-clive-evatt-dies-20180803-p4zvf4.html>**